In the High Court of Uttaranchal, at Nainital.
A.O. No. 1616/2001
(F.A.F.O. No. 395/1990)

The New India Assurance Co. Ltd.
through its Branch Manager, Branch
Office Court Road, Kashipur,
District Nainital ..... Appellant.

Vs.

1- Smt. Khilpa Devi W/o Mathura Datt(deceased)
2- Amba Datt S/o Matura Datt (deceased)
3- Krishnanand S/o Mathura Datt (deceased)
4- Km. Meera
5- Km. Shanti
6- Km. Basanti
7- Km. Hema
8- Kishore Chandra
Nos. 4 to 8 through their next friend
and natural guardian mother,
applicant No. 1 ..... Respondents.

Sri T.A. Khan, learned counsel for the appellant.
Sri Chetan Joshi, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This Appeal from Order, has been preferred against the judgment and award dated 23-12-1989, passed by Motor Accident Claim Tribunal/District Judge, Nainital, in MACP No. 92 of 1988, thereby awarding a sum of Rs. 1,35,000/- as compensation to the claimant/respondents along with interest @ 10% per annum from the date of the petition, till the date of realization. The Tribunal directed that the amount of compensation shall be payable by owner as well as the insurer of the vehicle, jointly and severally, but at the first instance the whole amount shall be paid by the Insurance Company.

2- Brief facts of the case are that on 16-1-1988, at about 4 P.M. the deceased Mathura Dutt along with his brother Ravi Dutt and two other companions was

going on bicycle from Kundeshwari to his village Bhimnagr. All the four persons were on cycles going to the left side of the road. When they reached near a culvert opposite Bhim Nagar, a tractor bearing registration No. URN 7287 was coming from the opposite direction rashly and negligently. Seeing the tractor being driven at a high speed on the wrong side of the road, Mathura Dutt and his companions went to the extreme left side on the non-metalled portion of the road, but the said tractor dragged the deceased with his cycle from some distance. As a result of this collision Mathura Dutt came beneath the wheel of the tractor and his organs of the body, i.e., head, face, stomach etc were completely curshed and he died instantaneously at the spot. The driver and conductor of the offending tractor escaped towards the jungle, leaving the tractor on the spot. The claimants filed the claim petition for award of compensation of Rs. 4,80,000/- in lieu of the death of Mathura Dutt. In the claim petition it was alleged that the deceased at the time of the accident was 55 years of age and he was an agriculturist by profession and also had dairy business. The deceased was earning Rs. 36,000/- per annum from agriculture and Rs. 12,000/- per annum from the dairy business, the total annual income being Rs. 48,000/-.

3- The owner of the offending tractor, the O.P. party No. 1 contested the claim petition by filing his W.S. He has admitted the accident occurred by his tractor but alleged that he is not liable to pay the compensation as the tractor was insured with New India Assurance Company and the liability is upon the insurer.

4- The New India Assurance Company also filed its W.S. and admitted the insurance of the offending tractor with it but pleaded that its liability to indemnify is only subject to statutory limit. It was also alleged that in case the claimants are found entitled to get any compensation then the same is recoverable under Section 96(4) of the Motor Vehicles Act.

5- On the pleadings of the parties adduced before the Tribunal, the following issues were framed:-

1- Whether the accident in question occurred on account of negligence in driving the tractor No. URN 7287?.
2- To what compensation and from whom, the claimants are entitled?

6- In support of his claim, the claimants produced Smt. Khilpa Devi P.W.1, and Ravi Dutt, P.W.2. Amar Nath, the owner/driver of the offending tractor, examined himself as D.W.1. Both the parties also filed documentary evidence.

7- The learned Tribunal on hearing the learned counsel for the parties and perusing the evidence on record allowed the claim petition U/S 110-A of the Motor Vehicles Act, 1939 and awarded Rs. 1,35,000/- as compensation to the claimant/respondents along with interest @ 10% per annum from the date of the petition, till the date for realization. The Tribunal directed that the amount of compensation shall be payable by owner as well as the insurer of the vehicle, jointly and severally, but at the first instance the whole amount shall be paid by the Insurance Company.

8- Feeling aggrieved by the impugned judgment and award, the New India Assurance Company has filed this appeal before the Allahabad High Court, which was transferred to this court after creation of new State.

9- Heard learned counsel for the parties and perused the record.

10- The record reveals that the offending Tractor in question was being driven in a rash and negligent manner by its driver and in excessive speed and on account of the rash and negligence the Tractor hit Mathura Dutt resulting his death. I do not find any infirmity in the finding recorded by the Tribunal with regard to this factual aspect.

11- As far as the compensation awarded in favour of the claimant/respondents is concerned, the learned counsel for the appellant has submitted that in view of the provisions of Section 95(2)(c) of the Motor Vehicles Act, 1939, the liability of the insurance company was up-to an extent of Rs. 50,000/- only.

12- The argument advanced by the learned counsel for the appellant is devoid of any force, firstly on the ground that U/S 95(2)(c) of the Motor Vehicles Act, the liability of the Insurance Company in case of a Tractor is unlimited, and secondly the insurance policy issued by the company also indicates that the amount of company's liability was upto an extent of Rs. 1,50,000/- in one event. The Tribunal has awarded a sum of Rs. 1,35,000/-, as compensation, hence the insurer of the offending truck in question is certainly

liable to pay the amount of compensation awarded by the Tribunal.

13- The learned Tribunal has also taken other aspects into consideration while calculating the amount of compensation to be awarded in favour of the claimants. The Tribunal has taken into account the age of the deceased as well as his income and thereafter has calculated the financial dependency of the claimants and after taking into consideration all these aspects the Tribunal has awarded a just and reasonable amount of compensation in favour of the claimants, which does not require any interference.

14- On the basis of assessment of evidence on record, I come to the conclusion that the judgment and award passed by the Motor Accident Claim Tribunal is absolutely justified and does not require any interference of this court.

15- The appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed. No order as to cost.

(B.C. Kandpal, J.)

Dated: 20-9-2006

ISB